

9 March 1983
OGC 83-01859

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MEMORANDUM FOR:

FROM:

Legislation Division

SUBJECT: S. 272 and H.R. 1043 - Publication of
Procurement Actions in Commerce Business
Daily

This memorandum will summarize various actions which have taken place in regard to S. 272 and H.R. 1043 since my memorandum to you of 8 February 1983.

After Senate passage of S. 272 with the Pressler/Cohen floor amendment to which we objected, S. 272 was sent to the House and held at the Speaker's desk. The House then took up H.R. 1043, a related small business/procurement bill to which there is no Agency objection.

On 15 February, the House passed H.R. 1043 over the strenuous objections of the House Armed Services Committee in the person of Representative Stratton, Chairman of that Committee's Subcommittee on Procurement. The House then attempted to take up S. 272. The plan apparently was to take up S. 272, strike out all of its provisions and substitute the provisions of H.R. 1043 as passed. The House would then request a conference with the Senate on S. 272 and the House would recede at conference.

The Agency would have objected to this course of action as it would have meant congressional passage of the Pressler/Cohen floor amendment language. Representative Stratton, however, objected to consideration of S. 272 under suspension of the rules. Hence, no further action on S. 272 was taken and, to date, none has been taken. H.R. 1043 was then sent to the Senate and there was referred to the Senate Small Business Committee.

I anticipated that the Senate would attempt to do what the House had failed to do: take up H.R. 1043, amend it so to strike its language, insert that of S. 272, pass H.R. 1043 as thus amended, request a conference with the House and have the House recede. Accordingly, I contacted Vicki Toensing, Chief Counsel, Senate Select Committee on Intelligence (SSCI) and she, in turn, contacted Jim Dykstra, Senator Cohen's designee on the SSCI. I informed them of our concerns about the Pressler/Cohen floor amendment language and asked how we could approach the Senate Small Business Committee to make our concerns known.

Toensing and Dykstra suggested that we work through the Subcommittee on Oversight of Government Management of the Senate Governmental Affairs Committee. This Subcommittee is chaired by Senator Cohen. The Senator also has a procurement bill, S. 338, which is in the Senate Governmental Affairs Committee. S. 338 is not moving, however, while H.R. 1043/S. 272 is. Accordingly, Senator Cohen's subcommittee staff is working with the Senate Small Business Committee staff to have some of Cohen's ideas from S. 338 placed in H.R. 1043/S. 272.

Dykstra contacted this Small Business/Governmental Affairs group and relayed our concerns about the Pressler/Cohen floor amendment. The Small Business/Governmental Affairs group countered with language creating an exemption for "classified procurements with respect to which a (CBD) notice . . . cannot be written in a manner which avoids the disclosure of classified information". [redacted] and I discussed this language and concluded that it was too restrictive and thus unacceptable. Accordingly, Dykstra and Toensing arranged a meeting on 2 March to discuss the matter with Small Business/Governmental Affairs.

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On 2 March, Toensing, Dykstra and I met with Mary B. Gerwin, Counsel to the Subcommittee, Jeffrey Minsky, Subcommittee Investigator and Michael Haynes, Chief Counsl, Senate Small Business Committee. At the meeting, I set forth our general concerns in this area. Gerwin and Haynes responded by proposing that we return to the Pressler/Cohen floor amendment language with the deletion of the phrase "to more than one source". The exception would thus be for procurements where "disclosure of the Agency's needs would compromise the national security". Both SSCI staff members and I thought that this would be (more than) acceptable. I asked, however, for a day's time to review it with Agency officials and promised I would relay our response to Gerwin and Haynes thru Toensing.

I contacted [redacted] on 3 March and relayed the proposal to him. He later informed me that neither he nor the Logistics/Procurement staff had any objections to the proposal.

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Hence, on 4 March, I contacted Toensing, informed her that we supported the language and asked her to convey this to Small Business and Governmental Affairs. She indicated that she would do so.

The only action remaining in the Senate is to insure that this language remains in the version of H.R. 1043 which is reported out by the Senate Small Business Committee.

Haynes and Gerwin confirmed that the plan was to treat S. 272 and H.R. 1043 as I had outlined above. They also stated that Senate floor action on H.R. 1043 could be expected in the next two weeks.

Haynes also said that he expected action on S. 272 on the House side during the week of 14 March.

I then contacted Mike O'Neill, Chief Counsel, House Permanent Select Committee on Intelligence. I informed him of what had taken place on the Senate side and asked for his assistance to insure that this language received support on the House side.

O'Neill confirmed Haynes' statement that action was expected in the near future on S. 272: the House Small Business Committee was expected to try again to have S. 272 considered under suspension of the rules and failing that, was expected to go to the Rules Committee to get a rule to force consideration of S. 272. O'Neill indicated that HPSCI had contacted the House leadership, made known to it the Intelligence Community's concerns, and requested that they be addressed, in conference if necessary. O'Neill expected that this action would protect our concerns.

This Office will continue to monitor this legislation in both the House and the Senate to insure that the desired language is in any bill which goes to the President for signature.

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(PS:maw)

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